

# UTAH

SUNDAY, AUGUST 2, 1998

## SPY PLANE

High-tech U2 to scan Utah for hazardous-waste sites. /C-2

8/035/017

## Life's a Blast And That's Just No Fun

Little Cottonwood neighbors  
sue to close granite quarry

BY LINDA FANTIN

THE SALT LAKE TRIBUNE

The blasts begin about 7 a.m., do not stop until dark and come without warning. The vibrations crack the plaster and send knickknacks tumbling to the floor.

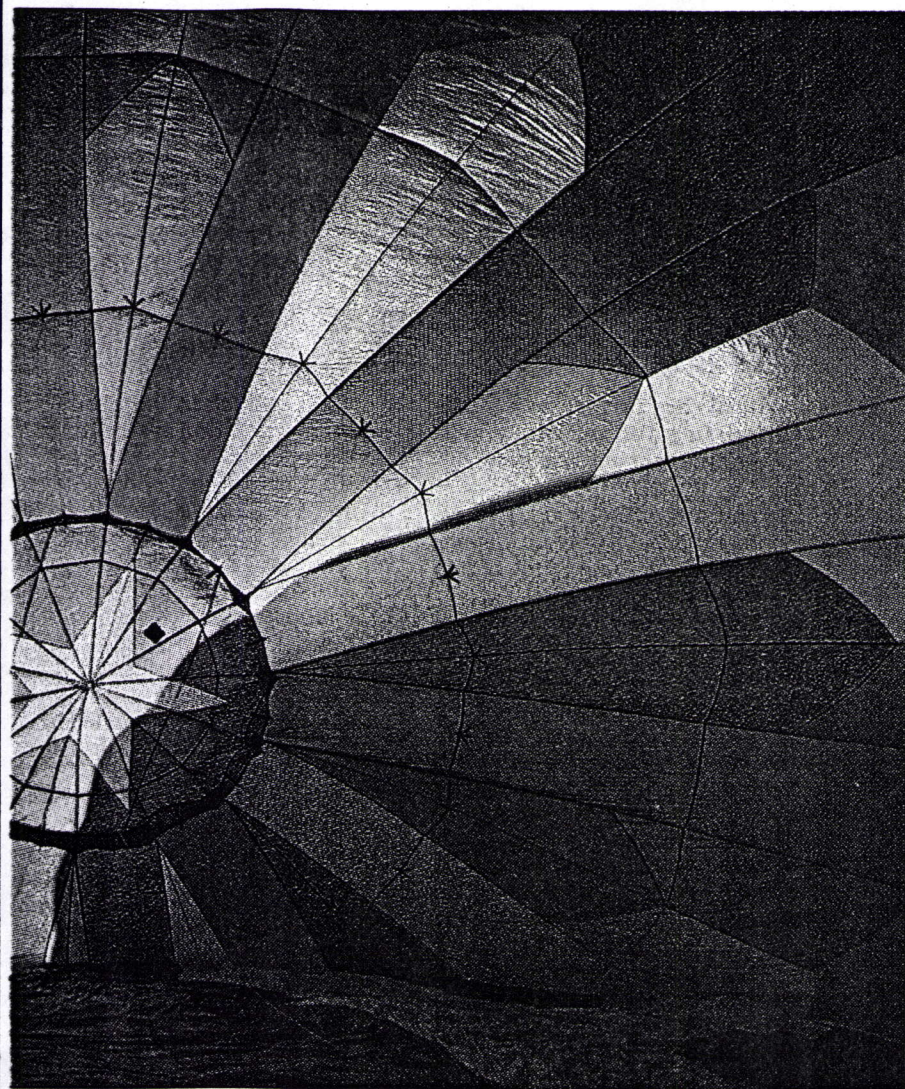
And to think Karen and Bruce Cunningham moved to Little Cottonwood Canyon for the tranquility. The disturbance is coming from their neighbor, who is grading roads into the steep hillside and splitting granite boulders.

The Cunninghams, too, have dug in, waging a last-ditch court battle to stop the project. In doing so, they are taking on two of the most sacred institutions in Utah: The Church of Jesus Christ of Latter-day Saints and private-property rights.

Jammed between them is a new Salt Lake County ordinance designed to protect sensitive lands from development. Known as the Foothills and Canyons Overlay Zone (FCOZ), the ordinance restricts development on steep slopes like those on the LDS Church's canyon property within 2,000 feet of the

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Danny La/The Salt Lake Tribune

## id Away

begins the inflation process that will take the hot-air balloon airborne the public, will be repeated today at 6:30 a.m. The event is part of the urnament that concludes today at Park City's Park Meadows course.

## Health Program Ready for First Patients

roll in the insurance plan the first year. They will have three HMOs from which to choose



5/035/017

## Neighbors Sue to Close Granite Quarry

■ Continued from C-1

Cunningham house.

The church received permission March 24 to extract 11,400 tons of granite from its canyon quarry. Work started May 28, and at least one road to the boulder field nearly is finished, said project manager Tom Hanson.

Contractors are busy rupturing the loose rocks and trucking them to Idaho, where they will be processed into slabs for the church's new assembly building, now under construction in downtown Salt Lake City. The 21,000-seat hall is expected to open in April 2000, and its exterior is being crafted to match that of the Mormon temple across the street.

County lawyers acknowledge that two roads needed to reach the rock pile exceed allowable slope standards under FCOZ, which was adopted in January. However, they believe the county planning board automatically waived those restrictions when it approved the project.

Announcement of the waiver surprised the Cunninghams and others who attended public hearings on the church's proposal. During those meetings, and in interviews with the news media, planners insisted the church had not requested, nor would it receive, any waivers or variances.

In fact, when the county's Planning Commission granted approval for the project, it attached a list of 16 conditions, the first being "comply with all requirements of the Foothills and Canyons Overlay Zone."

From the moment the plans became public, canyon residents and climbers argued the rock-removal operation violated several FCOZ provisions, and they quizzed county planners about compliance.

They zeroed in on an FCOZ rule prohibiting roadways on slopes between 30 percent and 50 percent, unless specifically authorized by the Planning Commission. Even under a waiver, those sections that exceed the 30 percent limit cannot stretch for more than 100 feet or total more than 10 percent of the entire road. The ordinance prohibits all roads crossing slopes steeper than 50 percent in all circumstances.

The church submitted numerous plans in an attempt to meet those standards, and to minimize the environmental damage caused by the project. At the time the Planning Commission granted approval, the plans still were a work in progress. When critics confronted the Planning Commission and later the County Commission about possible FCOZ violations, the county's response essentially was: Trust us.

"It is like boxing with a 500-pound marshmallow," said Cullen Battle, the Cunninghams' attorney. "You just never know where they are going or what they are doing."

Convinced the church was violating FCOZ road standards, the Cunninghams sought a temporary restraining order and sued the Planning Commission, the County Commission and the church. Third District Judge Stephen Henroid denied the restraining order, but scheduled an expedited hearing for Monday.

The Cunninghams hired their own expert to evaluate the road slopes, and his findings supported the couple's suspicions.

Evert Lawton, a licensed civil engineer and associate professor in the University of Utah's Department of Civil and Environmental Engineering, found:

■ Portions of the lower road that cross slopes greater than 30 percent represent at least 29 percent of the total distance, and a continuous section of the lower road crosses similar slopes for at least 143 feet.

■ Parts of the upper road that cross slopes greater than 30 percent constitute at least 73 percent of the total distance. A section of the upper road crosses similarly

steep slopes for 269 feet.

■ The steepest slope of either road was 48 percent.

"Our primary position is that neither the Planning Commission nor the Board of County Commissioners can allow anyone to build roads across slopes over 30 percent if it covers more than 10 percent of the total road or 100 feet in any single segment," Battle said. "The ordinance applies to everyone. That's really where it ends in our view."

The county's lawyers, however, point to separate zoning ordinances that give the Planning Commission broad authority to modify regulations. The county contends a waiver relating to slope standards was implicit in the Planning Commission approval because the board unequivocally prohibited development on slopes exceeding 50 percent.

Of course the Planning Commission intended to grant a waiver, the county's attorneys argue in court documents, otherwise church contractors could not access the boulder field.

Yet nowhere in the public record is there any testimony or written documentation outlining the need for waivers or variances in conjunction with the conditional-use permit. In fact, the only time the issue came up was during a County Commission appeal, and it was Karen Cunningham who broached the subject.

According to the minutes of that May 20 hearing, Commission Chairman Brent Overson responded that any variances would have to go before the Board of Adjustment and neighbors would be notified. During that same meeting, church attorney Marc Mascaro stated that his client was not seeking a variance, nor was the church suggesting anything contrary to the county ordinance.

Battle questioned how the Planning Commission could grant a waiver without a written request to do so, or without first establishing a need. Battle said county planners did not submit a required report detailing how the church's plans conflict with FCOZ.

"They have to engage in a com-



Danny La/The Salt Lake Tribune

The tranquility of Little Cottonwood Canyon is upset and neighbors shudder when earth movers roar into action and dynamite erupts as part of the LDS church's granite quarrying.

*"It is like boxing with a 500-pound marshmallow. You just never know where they [the County Commission or the Planning Commission] are going or what they are doing."*

### Cullen Battle

An attorney for the family suing to stop road construction

plete investigation and review of the proposal and establish the extent to which the standards will be exceeded before they can grant a waiver," Battle said.

The Planning Commission was aware of the slope standards and granted an "implicit" waiver, said Kent Lewis, counsel for the county. But to clarify the issue, the Planning Commission revisited the waiver July 14 to make explicit what was implicit.

Mascaro requested the clarification after the Cunninghams made an issue of the waiver in

their lawsuit. Mascaro said the church believed it had been granted a waiver to "keep the temporary road farther from the canyon road, out of sight from the canyon road areas, eliminate removal of more vegetation, and be environmentally more acceptable."

Planning Commission Chairman David Rees concurred.

"I believe that we had implied that the staff would have that ability to work with the applicant to minimize impact with the road and give them the flexibility they needed to do what made sense to

minimize impact," said Rees at the July 14 meeting.

But Battle said the county is bolstering the record to help its legal strategy. Even upon reconsideration, planning commissioners were not given specific analysis such as that conducted by Evert Lawton.

"They didn't have the baseline information on which to make a rational decision," Battle said. "Therefore, the approval was arbitrary, capricious and illegal. That is the standard we plan to prove in court."

## OBITUARIES